VINCENT A PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
WILLIAM J. FRANKLIN
JOHN F. GARZIGLIA
TODD J. PARRIOTT
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI *
JENNIFER L. RICHTER *
* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI
ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
(202) 296-0600

ROBERT LEWIS THOMPSON
GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1909-1986
TELECOPIER (202) 296-5572

ORIGINAL
FILE

October 5, 1992

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: **CC Docket No. 92-115**
Comments of SMR Systems Inc.

Dear Ms. Searcy:

Transmitted herewith on behalf of SMR Systems Inc., is an original and four (4) copies of its Comments in the above-referenced docket.

Please direct any questions or correspondence concerning this submission to our office.

Respectfully submitted,

William J. Franklin

cc: John Cimko, Jr. **(by hand)**
SMR Systems Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 of	)	**CC Docket No. 92-115**
the Commission's rules	)	
governing the Public	)	
Mobile Services	)	

To: The Commission

COMMENTS OF
SMR SYSTEMS INC.

William J. Franklin
PEPPER & CORAZZINI
1776 K Street, N.W.
200 Montgomery Building
Washington, D.C. 20006
(202) 296-0600

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SUMMARY OF COMMENTS

SMR Systems, Inc. ("SSI") is a licensee and applicant under Part 22 of the Commission's Rules. Although a relatively new entrant into common-carrier paging, SSI's principals have extensive experience in the mobile-radio business. Accordingly, SSI is uniquely qualified to provide comments to the Commission on the proposed revisions to Part 22 as they affect the smaller carrier.

As a general proposition, SSI supports the revisions to Part 22 as set forth in the NPRM. However, SSI believes that certain of the Commission's proposals require support, clarification, or modification. These may be summarized as follows:

- Proposed Section 22.105: The Commission should retain its existing 5-page minimum page limit for microfiched pleadings and its existing policies which permit the filing of deferred microfiche. Procedures for the filing of applications on diskette should be accelerated.
- Proposed Section 22.129: SSI supports the proposed rule.
- Proposed Section 22.144: SSI supports the proposed rule.
- Proposed Section 22.145: To prevent discontinuance of service to the public, a failure to file a renewal application should render a license terminable, but not automatically terminate it.
- Proposed Section 22.147: Conditional grants should be limited to no longer than 12 months. The proposed rule would disadvantage new licensees and effectively prevent most debt financing.
- Proposed Sections 22.163 & 22.165: SSI supports the proposed rules.
- Proposed Section 22.167: SSI supports the proposed rule.

- Proposed Section 22.507: Use of multi-frequency transmitters should be permitted in situations which are not conducive to frequency warehousing.

- Proposed Section 22.509: Existing licensees should retain limited rights to file mutually exclusive applications against nearby co-channel applicants.

- Proposed Section 22.535(c): The proposed height-power limit is unworkable and should be rewritten.

- Proposed Section 22.537 & 22.567: The proposed "substantial area/population" criteria for interference protection is unworkable and unneeded.

- Proposed Sections 22.539 & 22.569: Certain clarifications are needed for the additional-channel policies.

- Proposed Section 22.577: Dispatch service remains useful in rural areas, and should be permitted.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's rules governing the Public Mobile Services	)	**CC Docket No. 92-115**

To: The Commission

COMMENTS OF
SMR SYSTEMS INC.

SMR Systems, Inc. ("SSI"), by its attorneys and pursuant to Section 1.415(b) of the Commission's Rules, hereby files Comments with respect to the Notice of Proposed Rulemaking adopted in the above-captioned proceeding.[1/] SSI generally supports the Commission's goal of updating Part 22 of the Rules, subject to specific improvements suggested herein.

INTEREST OF SSI

SSI is a licensee and applicant under Part 22 of the Commission's Rules. It holds PLMS licenses KNKM670 and KNKM573 to provide paging and two-way mobile service in the Houston, Texas area. Although a relatively new entrant into common-carrier paging, SSI's principals have extensive experience in the mobile-radio business. Accordingly, SSI is uniquely qualified to provide comments to the Commission on the proposed revisions to Part 22 as they affect the smaller carrier.

[1/] Revision of Part 22, 7 FCC Rcd 3658 (1992) (Notice of Proposed Rulemaking) ("NPRM").

SPECIFIC COMMENTS

As a general proposition, SSI supports the revisions to Part 22 as set forth in the NPRM. However, SSI believes that certain of the Commission's proposals require support, clarification, or modification. Accordingly, using the section-by-section format which the Commission used in Appendix A to the NPRM, SSI has the following specific comments:

Proposed Section 22.105 -- Microfiche and Diskette Filings The Commission proposed to tighten its existing requirements for microfiche submittals substantially by (a) requiring all applications on standard forms be microfiched, (b) requiring that all submissions relating to a "current or pending application or an existing authorization" be microfiched, and (somewhat inconsistent with the first two requirements) that all filings longer than three pages be microfiched.[2/] As proposed, this requirement would be needlessly burdensome upon Part 22 applicants and licensees.

Specifically, the Commission should retain its existing 5-page minimum page limit for microfiched pleadings and its existing policies which permit the filing of deferred microfiche copies. The Part-22 communications bar experiences an increase

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[2/] NPRM, supra, 7 FCC Rcd at 3664. If these requirements collectively mean that all Part 22 filings are required to be microfiched, then the Rules should so state. Why list a number of categories of documents which require microfiching if the collective effect of the various categories is that all documents fit into one category or another?

in microfiche errors and a dramatic increase in costs for rush microfiching.[3/] These costs -- which ultimately are borne by communications subscribers -- do not serve the public interest.

SSI notes that the Commission also proposed at some undefined future time to accept applications and amendments thereto on diskette. The Commission currently has the International Frequency Registration Board proceeding pending (CC Docket No. 92-160). The Commission should expeditiously expand the procedures developed in that docket to apply to all Part 22 applications in a single filing.[4/] Further, the Commission should not require a concurrent microfiche submission of any application submitted on diskette.

Proposed Section 22.129 -- Settlement Policies The Commission proposed to limit payments for the dismissal of mutually exclusive applications or petitions to deny to the "legitimate and prudent expenses" in prosecuting the application or petition.[5/]

[3/] SSI would support a system in which the Commission's existing copy contractor optionally could receive an extra paper copy of any Part 22 filing, appropriate microfiching instructions, and a check for microfiching costs (payable to the contractor) in full satisfaction of the filer's requirements to submit microfiche copies of any document to the Commission. Under this scenario, which would eliminate all burdens of microfiching except the basic costs, the Commission's files would receive the microfiche copies directly from the copy contractor.

[4/] See, e.g., Comments of Pepper & Corazzini (filed in CC Docket No. 92-160 on September 25, 1992). Those Comments are incorporated herein by reference to describe the policies which should guide the Commission in developing procedures and standards for diskette filings.

[5/] NPRM, supra, 7 FCC Rcd at 3665.

SSI supports the proposed rule subject to an expansion of the limitation to any adverse pleading, not merely a petition to deny.[6/]

Proposed Section 22.144 -- Termination of Authorization The Commission proposed "that authorizations [would] automatically expire without further action by the Commission" upon a permittee's failure to construct its authorized facilities.[7/] Although it is difficult to see how this proposal modifies the current rule,[8/] SSI nevertheless supports the proposed rule.

Proposed Section 22.145 -- Renewal Procedures The Commission proposed "that [unrenewed] authorizations [would] automatically expire without further action by the Commission."[9/] The Commission apparently proposed this change to encourage the reuse of idle spectrum. Although SSI supports that goal, the Commission needs to balance that policy against the need to continue communications service to the public.

[6/] For example, an application for review, a petition for reconsideration, or an informal objection each could be used as the procedural basis for an extortionate settlement demand.

[7/] NPRM, supra, 7 FCC Rcd at 3661.

[8/] Existing Section 22.43(a)(3) states that, "If construction is not completed within the time period set forth in this rule the authorization will automatically expire." The problem is not the wording of this rule, but the Commission's failure to enforce it as written. Thus, the Commission could immediately adopt its proposed policy by re-interpreting the existing rule.

[9/] NPRM, supra, 7 FCC Rcd at 3661.

Specifically, as happened during the 1989 renewal cycle, it is certain that some carriers will fail to seek timely renewal for their operating PLMS facilities. To prevent discontinuance of service to the public in this situation, a failure to file a renewal application should render the license terminable, but not automatically terminate it. This would balance the needs for spectrum reclamation versus the communications needs of subscribers.

Proposed Section 22.147 -- Conditional Grants The Commission proposed to make all grants of PLMS applications perpetually conditional "upon the condition of non-interference for the entire term of the license."[10/] Under this proposal "the Commission would retain the right to order the licensee, without affording an opportunity for a hearing, to suspend operation of the facilities at the locations causing the interference" Id. This power would be limited to interference which occurs "because of an error or omission in the technical exhibits to the application...." The Commission intended that an applicant's certification of the accuracy of its engineering, as well as this license condition, would eliminate the need for any pre-grant technical review.

Unless carefully circumscribed, this proposal would wreak an amazing amount of damage to the PLMS industry. Accordingly, SSI supports this proposal only subject to substantial modification.

[10/] NPRM, supra, 7 FCC Rcd at 3659.

For one thing, the Commission's blanket powers to control operations could disrupt service to the public. What are a licensee's rights if the Commission erroneously orders it to cease operations? What happens if interference occurs, but is not caused by "an error or omission in the technical exhibits"? Can a licensee continue operations while it contests the existence of a violation of its license condition? Or must it cease operations, perhaps for months or years, as the Commission decides whether it acted properly?

For another thing, this proposal would prevent debt financing of PLMS systems for all but the very largest carriers. What prudent lender would accept the value of a PLMS license or the cash flow from PLMS system as collateral for an equipment loan if the Commission could suspend the license and shut off the cash flow at any time? In SSI's experience, no lender would do so.

Finally, unless the Commission intends to modify all existing PLMS licenses,[11/] this proposal would discriminate against new entrants. At least until the 1999 license renewals, existing licensees would have unconditioned licenses; new entrants would not.

For these reasons, SSI would support this proposal only if the license conditions would automatically expire within no longer than 12 months after grant.

[11/] Because the Commission did not indicate in its NPRM that it intended to modify existing licenses as a result of this proceeding, substantial questions exist whether the Commission lawfully could do so.

Proposed Sections 22.163 & 22.165 -- Prior Approval/Notification The Commission proposed to reduce the number of situations in which prior Commission approval or notification is required.[12] SSI supports the proposed rules, subject to the Commission's recognition that FCC Field Offices will have to accept the licensee's internal documents to establish that the licensee is operating its facilities (for which no Commission authorization/ notification is required) in accordance with the licensee's authorization.

Proposed Section 22.167 -- Finder's Preference The Commission proposed to grant finder's preferences to interested parties who provide information to the Commission that an authorized channel is in fact not being used. If the Commission were to cancel the affected authorization, the finder's application would be deemed the first-filed for this channel."[13] SSI supports the proposed rule as written.

Proposed Section 22.507 -- Multi-Frequency Operation In an apparent attempt to limit frequency warehousing, the Commission proposed to prohibit the use of multi-frequency transmitters.[14] SSI respectfully suggests that multi-frequency transmitters

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[12] NPRM, supra, 7 FCC Rcd at 3660-61.

[13] NPRM, supra, 7 FCC Rcd at 3660.

[14] NPRM, supra, 7 FCC Rcd at 3669.

should be permitted in situations which are not conducive to frequency warehousing.

For example, multi-frequency transmitters should be permitted at one location when the same licensee is operating several single-frequency transmitters at other locations of an integrated communications system. Similarly, independent licensees should be permitted to share a dual-licensed multi-frequency transmitter. This situation can often occur on an interim basis as licensees seek to share the cost of equipment as they increase the traffic on their separate systems.

Additionally, a single licensee might want to use a multi-frequency transmitter where its geographically distinct, separate-channel, wide-area paging systems overlap. Further, all licensees might want to use a pair of multi-frequency transmitters at each location to provide standby communications for two ultra-reliable, single-channel systems.

As these and similar examples establish, the Commission would not be serving the public interest by prohibiting multi-frequency transmitters in all situations.

Proposed Section 22.509 -- First-Come, First Served Applications

The Commission proposed to eliminate the present 60-day window in which interested parties may file applications which are mutually exclusive with earlier-filed applications appearing on public notice.[15/] Under this proposal an otherwise grantable applica-

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[15/] NPRM, supra, 7 FCC Rcd at 3659.

tion would automatically be granted under the "first-come, first-served" rules ("FCFS") unless a mutually exclusive application were accidentally filed on the same day. The Commission sought to "eliminate the need for most of the random selection processes we now conduct, expedite the processing of applications and prevent applicants from filing applications simply to impede a competitor's applications." Id. SSI supports this proposal only subject to substantial modification.

As a preliminary matter SSI noted that the Commission's proposal is unlikely to achieve all the hoped-for goals. Obviously, the FCFS rules will eliminate most lotteries.[16/] However, the rules will place a premium on licensees filing as many applications as possible as early as possible, in order to preclude competitors from blocking their expansion. Further, the new rules will encourage existing carriers and applicants to file an increased number of petitions against applications.

[16/] SSI is really unclear why the Commission seeks to eliminate lotteries. In the 35/43 MHz, VHF, and UHF bands, the lottery system has worked expeditiously and economically. At 900 MHz the lottery system per se has worked expeditiously and economically.

However, the Commission's existing "generic" 900 MHz rules have proven virtually impossible to administer, as neither the Commission staff nor applicants and licensees have been able to agree on which 900 MHz applications constitute any processing group for lottery purposes. Rather than fixing that problem by requiring 900 MHz applicants to specify a single channel for which the existing cut-off and lottery rules can be readily applied, the Commission is proposing the scrap the lottery system. As a superior alternative to modifying the Commission's proposal as discussed in the text, SSI would keep the lottery system but delete proposed Section 22.533 in its entirety.

Under the present rules, an existing licensee who waits to expand its system only takes the risk that, if a potentially blocking application appears on public notice, it will be put into a lottery. The new rules mean that a competitor or potential entrant who files a co-channel application near to an existing system absolutely has blocked the licensee's expansion -- even without any construction -- for eighteen months or so. Thus, the existing licensee will have everything to gain (and nothing to lose) by filing a Section 309 petition against the co-channel application.

The Commission can prevent the greatest portion of these problems by providing that existing permittees and licensees with an authorized co-channel station within a specified search distance[17/] have a 30-day period after the co-channel application appeared on public notice to file a mutually-exclusive applica-

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17/ SSI notes with alarm that the proposed Part 22 does not contain any specified search distances analogous to the present Sections 22.503 within which the applicants must search for co-channel stations. This omission is especially troublesome because the Commission's FCFS proposal puts a premium on filing defect-free applications.

SSI suggests that the Commission adopt a 108 kilometer (slightly more than 67 mile) search distance for 35-158 MHz paging stations, 126 kilometer (slightly more than 84 mile) search distance for 152 MHz two-way stations, and 108 kilometer (slightly more than 67 miles) search distance for 454 MHz two-way stations, in each case increasing to 200 kilometers (roughly 125 miles) for radials (± 22½°) which exceed the station's height-power limits. For 900 Mhz paging stations, the distances specified in proposed Table E-2 to Section 22.537 could be used.

tion.[18] This differs from the present rules by shortening the time period in which applications may be filed and dramatically limiting the eligibility of potential filers.

Proposed Section 22.535(c) -- Height-Power Limits The Commission proposed to replace its existing table of height-power limitations with the following provisions:

> (c) Except as provided in paragraphs (d) and (e) of this section, the ERP must not exceed the amount that would result in an average distance to the service contour of 32.2 kilometers (20 miles). The average distance to the service contour is calculated by taking the arithmetic mean of the distances determined using the procedures specified in §22.537 for the eight cardinal radial directions.

This proposed height-power limit is unworkable and should be rewritten.[19]

As a threshold problem, SSI assumes that the Commission means that the maximum ERP must be limited as specified in proposed Section 22.535(c). If so, at 900 MHz this rule reduces to a discontinuous high-power curve as an applicant utilizes the various high-power steps of Table E-1 to perform the computations required by proposed Section 22.537.

However, for VHF, UHF, and lowband channels, the high-power limit is not obvious, and can be computed only as an iterative

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[18] If the Commission deletes its proposed Section 22.533 (see footnote 16, supra), for these purposes all 900 MHz applications would be deemed mutually exclusive.

[19] The cellular height-power limit in proposed Section 22.913(b) has the same shortcomings as described herein.

process. As set forth in proposed Section 22.537, the service contour distance in each frequency band is a non-linear, exponential function of HAAT and ERP. Thus, the proposed rule requires the applicant to take a linear arithmetic average of non-linear functions.

The resulting height-power formula cannot be solved symbolically, cannot be solved using linear formulas, and cannot be solved using logarithmic formulas. As best that SSI can determine, the height-power limit can only be determined by trial and error.

Further, because of non-linearities, the height-power limit appears to be a function of the eight individual HAATs, and not the average HAAT of the site. Two sites with the same average HAAT could have different height-power limits.

SSI recognizes that the Commission has proposed a sophisticated height-power formula that, in theory, optimizes the permissible coverage from a high transmitter site. However, SSI is concerned that the determination of height-power limits under this formula will be so arcane that applicants and their engineers will be unable to do so accurately and repeatedly.

Accordingly, SSI respectfully suggests that the Commission adopt a simpler formula which produces the same general result. For example, if the maximum ERP were specified as the power level which would produce a 32.2 kilometer (20 mile) service contour

for the average HAAT for a site, the power level could be readily determined.[20/]

Proposed Section 22.537 & 22.567 -- Interference Protection In proposed Sections 22.537(a)(3) and 22.567(a)(1)(iii) the Commission stated that it would only accept overlapping service and interference contours if:

> the area and/or population to which service would be provided by the proposed transmitter is substantial, and service gained would exceed that lost as a result of agreements to accept interference.

SSI respectfully suggests that the proposed "substantial area/population" criteria for interference protection is unworkable and unneeded. Accordingly, the Commission should delete proposed subsections 22.537(a)(3) and 22.567(a)(1)(iii).

These subsections will only come into play if the applicant and an existing nearby co-channel licensee agree to accept any received interference. Assuming that such an agreement has been reached, why should the Commission care if the incremental area or population is "substantial"? By hypothesis, the two affected

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[20/] If the service contour formulas in proposed Section 22.537 are written symbolically as:

$$d = a * h^b * p^c$$

then the height-power limit for SSI's proposed formula would be computed as:

$$p = [\ \log(32.2) - \log(a) - (b * \log(h))\ ] \div c$$

For any given frequency band, all values in this formula except h are known. Thus, the resulting height-power limit can be easily computed.

carriers will have reached a marketplace decision that the acceptance of interference will improve their communications services. By accepting interference, they will have eliminated any interference or other regulatory issues which the Commission might otherwise have to resolve.

The proposed "substantial area/population" criteria for interference protection merely gives a third party (e.g., another licensee or applicant) grounds upon which to oppose the applicant's or licensee's acceptance of interference.[21] This result would not serve the public interest.

Proposed Sections 22.539 & 22.569 -- Additional Channel Policies

In a pair of proposals, the Commission sought to simplify its channel allocation policies for both mobile and paging stations.[22] SSI supports these policies subject to certain clarifications.

For paging stations, in Section 22.539 the Commission proposed to require that each paging station "provide service to the public" before the licensee could apply for a new paging channel. SSI respectfully suggests that the phrase "provide service to the public" should be clarified to mean "ready, willing, and fully capable to serve the public" and not "having

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[21] Moreover, because "substantial" is undefined, the petitioner can in good faith assert almost any position if the proposed rule is adopted.

[22] NPRM, supra, 7 FCC Rcd at 3660.

paying subscribers."[23] There are common situations, for example, when a new paging system first begins operation and the licensee is looking for business, that a fully operational paging system might not have subscribers.

For two-way stations, in Section 22.569 the Commission proposed "to assign no more than two channels in an area to a carrier per application cycle...."[24] Further, the Commission would require the licensee to place both channels in operation before applying for two more channels. Id. SSI respectfully suggests that the latter policy is needlessly restrictive.

The Commission should limit each applicant to only two pending applications or unconstructed stations for new two-way channels per area as proposed. However, once the licensee places the first of those two stations into operation, it should be immediately eligible for applying for one additional channel. This modification retains the spirit of the Commission's proposal while giving licensees needed marketplace flexibility.

Proposed Section 22.577 -- Dispatch Service The Commission proposed to eliminate its grandfathered authorization for dispatch service.[25] While not economically justifiable in urban

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[23] SSI recognizes that having bona fide paying subscribers can validly serve as a surrogate for a determination that a paging system is ready, willing, and fully capable to serve subscribers. However, the existence of subscribers should only be a test, and a not a regulatory requirement.

[24] NPRM, supra, 7 FCC Rcd at 3713 (proposed §22.569).

[25] NPRM, supra, 7 FCC Rcd at 3671.

areas, dispatch service remains useful -- and as SSI understands, is still offered -- in remote rural areas. As it has done generally throughout the breadth of its regulations in a variety of contexts, the Commission let the marketplace decide whether dispatch service should be offered.

CONCLUSION

Accordingly, SMR Systems Inc. respectfully requests that the Commission adopt its proposed revisions to Part 22 with the rule changes suggested herein.

Respectfully submitted,

SMR SYSTEMS INC.

By: 
William J. Franklin
Its Attorney

PEPPER & CORAZZINI
1776 K Street, N.W.
200 Montgomery Building
Washington, D.C. 20006
(202) 296-0600